

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1764 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TRUSHA DESAI

Versus

STATE OF GUJARAT

Appearance:

MR AKIL KURESHI for Petitioners
MS. NANDINI JOSHI AGP for Respondent Nos. 1 and 2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/11/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioners who were working as Lecturers on ad hoc basis at the relevant time, at Bahauddin Arts College, Junagadh, have challenged the

policy of the State Government of making ad hoc temporary appointments on permanent posts and thereby depriving the petitioners of various advantages of permanent appointments.

2. The petitioners are qualified persons in their respective fields and they were appointed by the respondents as lecturers on ad hoc basis at Bahauddin Arts College, Junagadh. Both the petitioners have detailed their educational qualifications in the memo of the petition. By the appointment orders dated July 16, 1987 and August 28, 1987 at Annexures A and A-1 respectively, they were appointed as lecturers for the first term of the academic year of 1987-88 and on the term getting over in the month of October 1987 both the petitioners were discontinued. They were given fresh appointment orders at the beginning of the second term of the academic year 1987-88 on ad hoc basis upto the end of the academic year 1987-88 which was due to expire on April 30, 1988. They, therefore, filed the petition and claimed the reliefs to appoint them on regular basis with retrospective effect i.e., from the date of their first appointment, that is, July 16, 1987 and August 26, 1987 respectively and also further claimed to permit them to hold the said post on regular basis till regularly selected GPSC candidate is appointed on the said post or transferred from other place and also prayed to permit them to appear before the GPSC as and when interviews are held for the said post even if the petitioners have become overaged by relaxing the age limit.

3. The petition was admitted and ad-interim relief in terms of para 9 (E) of the petition was also granted vide order dated April 8, 1988 and thereby respondents were directed to allow the petitioners to remain in continuous services and allow the petitioners all the benefits of regular appointees. It was also further clarified in the said order that if the respondents feel aggrieved by the aforesaid order of interim relief, it will be open to the respondents to file affidavit in reply and request the Court for vacating and/or modifying the interim relief. However, it would be desirable that this course may be adopted only after filing the affidavit in reply.

4. When the petition is called out for final hearing, Mr. Akil Kureshi, learned advocate for the petitioners and Ms. Nandini Joshi, learned AGP for respondent Nos.1 and 2 are present.

5. Ms. Joshi, learned AGP, upon instructions

received from Mr. P.D. Ankoliya, Senior Clerk working in the office of Commissioner of Higher Education, Gandhinagar, states at the bar that so far as petitioner No.1 is concerned, she appeared in the interview before the GPSC and got selected through GPSC and pursuant to her selection the Director of Higher Education, Gandhinagar, issued appointment order on July 16, 1990 appointing her on regular basis and pursuant to the said order she joined the services on regular basis on July 20, 1990 and, therefore, in view of the aforesaid state of affairs since petitioner No.1 has been selected through GPSC and regularly appointed by the Director of Higher Education, the grievance raised by petitioner No.1 in this petition now does not survive qua her. Mr. Kureshi, learned advocate for the petitioners also endorsed that in view of the aforesaid statement made by learned AGP, the grievance raised by petitioner No.1 now has been redressed. Therefore, both the learned advocates jointly submitted that appropriate order in that connection qua petitioner No.1 may be passed.

6. Mr. Kureshi contended that so far as the petitioner No.2 is concerned, her grievance is still not redressed. Therefore, necessary orders directing the respondents to consider her case for regular appointment on the post in question may be passed in view of the fact that she has served in the college for 13 years. Alternatively he also prayed that till GPSC selected candidate is appointed on regular basis or transferred from other place to the post in question she may be allowed to continue and appropriate orders in that connection may be passed qua petitioner No.2 and she may be permitted to appear in written test and interview as and when same is held for the said post even if petitioner No.2 has become over-aged by relaxing the age limit. In support of the aforesaid contention, reliance is placed on the decision of the Supreme Court in the case of Rattanlal and others v. State of Haryana and others, 1986 LAB.I.C. 1599. Ms. Joshi, learned AGP contended that so far as the request made by the learned advocate for the petitioners in respect of petitioner No.2 to consider her case for regular appointment on the post in question in view of the fact that she has served for 13 years, the said prayer cannot be granted in view of the settled proposition of law laid down by the Apex Court of the country as it is outside the scope and ambit of Article 226 of the Constitution of India. However, so far as the alternative prayer made by petitioner No.2 is concerned, appropriate direction may be issued as deemed fit by this Court in view of the principles enunciated by the Supreme Court in Rattanlal's case (supra).

7. Having heard learned advocates for the parties and on having perusal of the averments made in the petition so also considering the submissions advanced at the bar and in view of the law laid down by the Apex Court in Rattanlal's case (supra), I am of the opinion that so far as the request made by petitioner No.2 for regular appointment on the post in question in view of the fact that she has served for 13 years, cannot be considered. It may be noted that she has been continued in service by virtue of the interim order passed by this court while admitting the petition and the petition came up for final hearing after 12 years, that fact by itself is not a ground to accept the request made by the petitioner No.2 for regularization of her services.

8. It is settled principles of law enunciated by the Supreme Court in the case of P Govindaswami and another v. S. Narayanan and others, 1987 (Supp) SCC 58, wherein it is held that the views expressed in the course of the judgment in the interlocutory proceedings are tentative by the very nature of things. The matter will doubtless be disposed of finally in accordance with law on the basis of the material placed before the Court in the light of the submissions advanced by the parties uninhibited one way or the other by what has been said whilst disposing of the interlocutory application. Again in the case of Jaikishan Jagwani and others v. Britomatics Enterprises Pvt. Ltd. and others, 1987 (Supp) SCC 72, the Supreme Court has held that When the question of deciding the matter on merits ultimately arises, the matter would of course be disposed of with an open mind influenced or uninhibited by any observations made in the course of these orders, on the basis of the evidence on record and in the light of submissions then made in accordance with law. In view of the above referred to settled position of law that the interim relief recorded cannot be considered at the time of final hearing as Court hearing the matter for final hearing has to come to the conclusion on the basis of evidence on record and in light of submissions made in accordance with law. Therefore, the request made by the petitioner for regularizing the appointment of the petitioner No.2 in view of the fact that she has been continued on the said post for last 13 years by virtue of the interim relief cannot be accepted.

9. However, so far as the request made by petitioner No.2 with respect to continuing her on the said post till regularly selected candidate through the GPSC is appointed or transferred from other place to the said

college is concerned, it can be considered. The Supreme Court in Rattanlal's case (supra) has deprecated the practice of appointment of teachers on ad hoc basis at the commencement of the year and terminating their services before summer vacation as such practice is violative of Article 14 and 16 of the Constitution of India. In the said judgment, in paragraph 2 following directions were given by the Supreme Court:

"We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on an ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are not working on such ad hoc basis if they have the prescribed qualification may also apply for being appointed regularly in those posts. The State Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of the system of 'ad hoc' appointments. If any of the petitioners in these petitions has under any existing rule acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in his case."

In view of the aforesaid observations made in paragraph 2 of the above cited judgment, it would be in the fitness of the things to direct the respondents to continue petitioner No.2 on the said post till regularly selected GPSC candidate is appointed or transferred to the said post from other place. It would also be proper to direct that if petitioner No.2 again applies for the said post, though as stated by Ms. Joshi, learned AGP that petitioner No.2 was once allowed to appear in GPSC interview but failed, GPSC shall allow her to appear in the written test as well as interview if she is otherwise qualified by relaxing qualification of maximum age prescribed for appointment to the post in question since she is a victim of the system of ad hoc appointment which would meet the ends of justice.

10. In view of the aforesaid observations, since the grievance raised by petitioner No.1 is redressed, the petition qua petitioner No.1 does not survive and is disposed of qua petitioner No.1. So far as the case of

petitioner No.2 is concerned, the respondents shall continue the petitioner No.2 on the post in question till regularly selected candidate through GPSC is appointed or transferred to the said post from other place. The respondents are further directed that if petitioner No.2 again applies for the said post, GPSC shall allow her to appear in the written test as well as interview if she is otherwise qualified, by relaxing qualification of maximum age prescribed for appointment to the post in question.

11. With the aforesaid observations and directions, the petition qua petitioner No.1 stands disposed of. Rule is made absolute to the aforesaid extent qua petitioner No.2 is concerned with no order as to costs. Subject to the above directions, ad-interim relief granted at the time of admission of the petition is vacated.

24.11.2000. (A.M.Kapadia, J.)

(karan)